

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ALLSTATE INSURANCE COMPANY	:	CIVIL ACTION
	:	
Plaintiff,	:	NO. 05-02800
	:	
v.	:	
	:	
WILLIAM ERVIN, et al.,	:	
	:	
Defendants.	:	

Stengel, J.

August 14, 2006

**FINDINGS OF FACT**

1. Plaintiff Allstate Insurance Company ("Allstate") is an insurance company incorporated in the State of Illinois, registered to do business in the Commonwealth of Pennsylvania and maintaining its principal place of business at 2775 Sanders Road, Northbrook, Illinois 60062-6127.
2. Defendants William Ervin and Wilma Ervin, husband and wife, are adult individuals who resided at 816 Lorraine Drive, Media, Pennsylvania 19063 on June 22, 2003.
3. Defendant William D. Ervin ("Doug Ervin") is an adult individual who resided at 816 Lorraine Drive, Media, Pennsylvania 19063 on June 22, 2003.
4. Defendant Daniel Ervin is an adult individual who resided at 816 Lorraine Drive, Media, Pennsylvania on June 22, 2003. Daniel Ervin's date of birth is May 20, 1984, and his age was nineteen years and one month on the date of the occurrence.
5. Defendant Brett J. Rigney is an adult individual who resides at 2867 Lee Drive, Jamison, Pennsylvania 18929.
6. Defendants William Ervin and Wilma Ervin, husband and wife, were named insureds under Plaintiff Allstate's Deluxe Plus Homeowners Policy AP325-2, Policy No. 101167656 (the "Policy"), a copy of which is marked as Exhibit "A."

7. Defendants Doug Ervin and Daniel Ervin are the sons of William and Wilma Ervin, husband and wife, and resided with William and Wilma Ervin at 816 Lorraine Drive, Media, Pennsylvania on or about June 22, 2003.
8. On or about June 22, 2003, a party was held at the home of Defendants William Ervin and Wilma Ervin, husband and wife, at 816 Lorraine Drive, Media, Pennsylvania, which was attended by Defendants Doug Ervin, Daniel Ervin and Brett J. Rigney.
9. Defendant Brett J. Rigney filed a Civil Complaint in the Court of Common Pleas of Delaware County, No. 05-3718 (the "Rigney Complaint"), a copy of which is marked as Exhibit "B."
10. The Rigney Complaint contains the following averments:
  - a. On or about June 22, 2003, the Plaintiff was invited to attend a party being held at the home of the Defendants, 816 Lorraine Drive, Media, PA. Compl. ¶ 5.
  - b. Upon information and belief, several of those in attendance at the party were under the age of twenty-one (21). Compl. ¶ 6.
  - c. Alcohol was present in the household and served to underage individuals at the time of the party. Compl. ¶ 7.
  - d. Moreover, upon information and belief, Defendants Mr. and Mrs. Ervin knew or should have known that alcohol was going to be consumed by individuals under the legal drinking age of twenty-one (21). Compl. ¶ 11.
  - e. Defendants Mr. and Mrs. Ervin knew or reasonably should have known that the alcohol purchased, served, and consumed at the party would be imbibed by individuals under the legal drinking age of twenty one (21). Compl. ¶ 12.
  - f. Upon information and belief, Defendants Mr. and Mrs. Ervin furnished alcohol to their underage son, Defendant Daniel Ervin. Compl. ¶ 13.
  - g. During the course of the "party," the Defendants, Daniel and Doug Ervin admittedly became extremely intoxicated. Compl. ¶ 14.

- h. Soon thereafter, Defendant Daniel Ervin, without any provocation or cause, violently and brutally assaulted and battered the Plaintiff with great force, by punching and throwing the Plaintiff through a car window and stomping on the Plaintiff's left foot, which caused the Plaintiff to sustain severe personal injuries. Compl. ¶ 15.
  - i. Defendant Doug Ervin, without any provocation or cause, violently and brutally joined Defendant Daniel Ervin in assaulting and battering the Plaintiff with great force, beating the Plaintiff and causing the Plaintiff to sustain severe personal injuries. Compl. ¶ 16.
  - j. As a direct result, Plaintiff was caused to have surgery performed on his left foot, at which time an annulated screw system was inserted into Plaintiff's left foot, which resulted in the Plaintiff not being able to walk or bear any weight on his injured foot for six (6) to eight (8) weeks, along with several other restrictions, and leading to a protracted period of recovery. Compl. ¶ 18.
  - k. Defendants Doug and Daniel Ervin, were convicted of simple assault and harassment in the Court of Common Pleas, Delaware County, Pennsylvania, for their actions towards Brett Rigney on June 22, 2003. Compl. ¶ 19.
11. The Rigney Complaint sets forth the following causes of action against the Ervins:
- a. Count I alleges a cause of action sounding in negligence for social host liability against all of the Ervin Defendants.
  - b. Count II sets forth a cause of action for negligent supervision against Defendants William Ervin and Wilma Ervin.
  - c. Count III alleges an intentional tort of assault and battery against Defendant Daniel Ervin.
  - d. Count IV sets forth a cause of action for intentional infliction of emotional distress against Defendant Daniel Ervin.
  - e. Count V asserts a negligent infliction of emotional distress claim against Defendant Daniel Ervin.

- f. Count VI sets forth a cause of action for assault and battery against Defendant Doug Ervin.
  - g. Count VII sets forth a cause of action for intentional infliction of emotional distress against Defendant Doug Ervin.
  - h. Count VIII sets forth a cause of action for negligent infliction of emotional distress against Defendant Doug Ervin.
- 12. On December 20, 2004, Plaintiff Allstate sent a reservation of rights letter to Defendants William Ervin and Wilma Ervin, husband and wife, a copy of which is marked as Exhibit "C."
  - 13. On July 16, 2003, Plaintiff Allstate sent reservation of rights letters to Defendants Doug Ervin and Daniel Ervin, copies of which are marked as Exhibits "D" and "E."
  - 14. Subject to the aforementioned reservation of rights, Plaintiff Allstate is currently providing Defendants William Ervin and Wilma Ervin, husband and wife, Doug Ervin and Daniel Ervin, with a defense in the Civil Action filed by Defendant Brett J. Rigney.
  - 15. Pursuant to that defense, an Answer and New Matter was filed in the underlying action. A copy of the Answer and New Matter is marked as Exhibit "H."
  - 16. The Policy contains the following provisions in Section II - Family Liability and Guest Medical Protection:

**Coverage X**  
**Family Liability Protection**

**Losses We Cover Under Coverage X:**

Subject to the terms, conditions and limitations of this policy, Allstate will pay damages which an insured person becomes legally obligated to pay because of bodily injury or property damage arising from an occurrence to which this policy applies, and covered by this part of the policy.

"Occurrence" is defined as "an accident, including continuous or repeated exposure to substantially the same general harmful conditions during the policy period, resulting in bodily injury or property damage."

Policy at 3, 21 (emphasis omitted).

17. The Policy contains the following relevant exclusions in Section II:

**Losses We Do Not Cover Under Coverage X**

We do not cover any bodily injury or property damage intended by, or which may reasonably be expected to result from the intentional or criminal acts or omissions of, any insured person. This exclusion applies even if:

- (a) such insured person lacks the mental capacity to govern his or her conduct;
- (b) such bodily injury or property damage is of a different kind or degree than that intended or reasonably expected; or
- (c) such bodily injury or property damage is sustained by a different person than intended or reasonably expected.

This exclusion applies regardless of whether or not such insured person is actually charged with, or convicted of, a crime.

Policy at 22 (emphasis omitted).

18. As stated in the Rigney Complaint, Defendants Doug Ervin and Daniel Ervin were convicted of the crimes of simple assault and harassment as a result of the assault that occurred on June 22, 2003. A copy of the transcripts of the criminal trial held on March 7 and 11, 2005 before the Honorable Charles C. Keeler marked as Exhibits "F" and "G."

19. The Policy provides in the Insuring Agreement:

The terms of this policy impose joint obligations on the persons named on the Policy Declarations as the insured and on that person's resident spouse. These persons are defined as

you or your. This means that responsibilities, acts and omissions of a person defined as you or your will be binding upon any other person defined as you or your.

The terms of this policy impose joint obligations on persons defined as an insured person. This means that responsibilities, acts and failures to act of a person defined as an insured person will be binding upon another person defined as an insured person.

"Insured Person(s)" is defined as "you and, if a resident of your household:

- (a) any relative; and
- (b) any dependent person in your care."

Policy at 3-4.

- 20. At all times relevant to this Complaint, Defendants Doug Ervin and Daniel Ervin are relatives of Defendants William Ervin and Wilma Ervin, husband and wife, and are also residents in Defendant William and Wilma Ervin's household.
- 21. Defendants Doug Ervin and Daniel Ervin are "insured persons" under the Policy.

### **CONCLUSIONS OF LAW**

- 1. Defendant Brett J. Rigney's allegations against Defendants Doug Ervin and Daniel Ervin, as set forth in the Rigney Complaint, are based solely upon intentional and criminal conduct which was reasonably expected to result in personal injuries to Defendant Brett J. Rigney.
- 2. The Policy does not cover bodily injury that results from the intentional and criminal acts of an insured person and, as a result of the criminal convictions of Defendants Doug Ervin and Daniel Ervin for simple assault, Plaintiff is not obligated to defend or indemnify Doug Ervin and Daniel Ervin for the claims asserted by Defendant Brett J. Rigney in the Rigney Complaint pursuant to the criminal acts exclusion set forth in the Policy.
- 3. Defendants Doug Ervin and Daniel Ervin are "insured persons" under the Policy.

4. The assault of Defendant Brett J. Rigney by Defendants Doug Ervin and Daniel Ervin does not constitute an "occurrence" as defined in the Policy as to Defendants Doug Ervin and Daniel Ervin, and Plaintiff is not obligated to defend or indemnify Doug Ervin and Daniel Ervin for the claims asserted by Defendant Brett J. Rigney in the Rigney Complaint.
5. By stipulation of the parties, the assault of Defendant Brett J. Rigney by Defendants Doug Ervin and Daniel Ervin constitutes an "occurrence" as defined in the Policy as to the claims of social host liability and negligent supervision against Defendants William Ervin and Wilma Ervin.
6. The criminal acts exclusion contained in the Policy applies to "any insured," and, as a result of the criminal convictions of Defendants Doug Ervin and Daniel Ervin for simple assault, Plaintiff is not obligated to defend or indemnify William Ervin and Wilma Ervin for the claims asserted by Defendant Brett J. Rigney in the Rigney Complaint.
7. Pursuant to the joint obligations clause contained in the Policy, Plaintiff is not obligated to defend or indemnify William Ervin and Wilma Ervin for the claims asserted by Defendant Brett J. Rigney in the Rigney Complaint as a result of the criminal convictions of Defendants Doug Ervin and Daniel Ervin for simple assault.

### **DISCUSSION**

This case is governed by the language of the Policy's criminal acts exclusion, which expressly applies to "any insured." Policy at 22. There is no question that the simple assault committed by Doug Ervin and Daniel Ervin constituted an "occurrence," as defined by in the Policy, for Rigney's social host liability and negligent supervision claims against William Ervin and Wilma Ervin. However, the Pennsylvania Superior Court has found that an insurer does not owe a duty to defend an "innocent" insured whose negligence leads to intentional or criminal acts by another insured when the policy

excludes coverage for bodily injuries arising from the intentional or criminal acts of "any insured." Donegal Mutual Ins. Co. v. Baumhammers, 893 A.2d 797, 818 (Pa. Super. Ct. 2006) (immaterial that parents of child who committed criminal acts did not engage in criminal behavior because the policy exclusion applied to the criminal behavior of "any insured"). See also Gen. Accident Ins. Co. of Am. v. Allen, 708 A.2d 828, 832 (Pa. Super. Ct. 1998) (noting distinction between exclusion for "any insured" and "the insured").

The Policy's criminal acts exclusion in this case specifically excludes from coverage "any bodily injury . . . which may reasonably be expected to result from the . . . criminal acts . . . of . . . any insured person." Policy at 22 (emphasis added). The use of the term "any insured" absolves Allstate of the duty to defend William Ervin and Wilma Ervin in this case pursuant to Baumhammers and Allen.<sup>1</sup>

---

The cases cited by the Ervins at trial are distinguishable from the case at hand. In Nationwide Mut. Fire Ins. Co. of Columbus, Ohio v. Pipher, 140 F.3d 222, 225 (3d Cir. 1998), the Third Circuit held that, in the absence of any Pennsylvania Supreme Court precedent, an insurance company has a duty to defend its insured against a complaint alleging negligent conduct on the part of the insured as well as a third party's intentional or criminal conduct. The Pipher case is readily distinguishable from this case because the policy at issue contained significantly narrower exclusionary language, and the Third Circuit's decision would control this case only in the absence of the criminal acts exclusion. Moreover, the third party who committed the criminal act in Pipher was not insured under the defendant's insurance policy. See id. A criminal act committed by the unrelated third party, therefore, could not trigger a criminal acts exclusion, even if the insurance policy in Pipher had contained a provision such as that at issue in the Policy here.

The Ervins' reliance on Allen, 708 A.2d at 832, is also misplaced. The insurance policy at issue in Allen excluded "bodily injury . . . which is expected or intended by the insured." Id. at 830 (emphasis added). The Pennsylvania Superior Court determined that the term "the insured" excluded coverage for an innocent insured only if the insured in question intended the bodily injury at issue to occur. Id. The Policy's exclusionary provision in this case, by contrast, excludes from coverage bodily injury resulting from the intentional or criminal acts of "any insured." Policy at 22. The Allen court specifically noted the term "any insured" excluded coverage for an innocent co-insured even when the insured in question did not intend the injury or damage at issue. Id. The claims against William and Wilma Ervin in this case sound in negligence, and the holding of the Allen case is therefore inapplicable on these facts.



Furthermore, the Policy's joint obligations clause also precludes Allstate's duty to defend William and Wilma Ervin. The joint obligations clause provides that the acts of one person insured by the Policy are imputed to and binding upon all other persons insured by the Policy. See Policy at 3-4. As described above, the Policy's criminal acts exclusion excludes coverage for bodily injury resulting from the intentional or criminal acts of any insured person. Id. at 22. Thus, the joint obligations clause attributes the simple assault committed by Doug Ervin and Daniel Ervin to William and Wilma Ervin, and Allstate does not have a duty to defend the Ervins pursuant to the criminal acts exclusion. An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ALLSTATE INSURANCE COMPANY	:	CIVIL ACTION
	:	
Plaintiff,	:	NO. 05-02800
	:	
v.	:	
	:	
WILLIAM ERVIN, et al.,	:	
	:	
Defendants.	:	

**VERDICT**

**AND NOW**, this 14th day of August, 2006, following a bench trial on the merits, and upon consideration of the parties' Proposed Findings of Fact, Proposed Conclusions of Law, trial briefs, and oral argument, and pursuant to the attached Findings of Fact and Conclusions of Law, it is hereby **ORDERED** that the Court finds for Plaintiff and against Defendants. The Court holds that there is no insurance coverage under the Policy and that Plaintiff does not have a duty to defend in the underlying state court case. The Clerk of Court shall mark this case as closed for statistical purposes.

BY THE COURT:

/s/ Lawrence F. Stengel  
LAWRENCE F. STENGEL, J.